

MICHAEL JON McFARLAND

IBLA 80-795

Decided November 26, 1980

Appeal from decision of the California State Office, Bureau of Land Management, declaring a mining claim abandoned and void. CA MC 9957.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment

Where the owner of an unpatented mining claim located after Oct. 21, 1976, in the calendar year 1978, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Dec. 30, 1979, the calendar year following the calendar year in which the claim was located, the claim is properly and conclusively deemed to have been abandoned and to be void.

2. Notice: Generally -- Regulations: Generally

All persons dealing with the Government are presumed to have knowledge of duly promulgated regulations.

APPEARANCES: Michael Jon McFarland, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Michael Jon McFarland, on behalf of himself and his colocators, Calvin B. Fred and Kenneth Riley, appeals from the July 7, 1980, decision of the California State Office, Bureau of Land Management (BLM), which declared the Buckeye Quartz lode mining claim abandoned and void

for failure to file evidence of assessment work for the period from September 1, 1978, to September 1, 1979, with BLM on or before December 30, 1979, as required by 43 CFR 3833.2-1.

The Buckeye Quartz lode mining claim was located January 9, 1978, and recorded with BLM March 22, 1978, under serial No. CA MC 9957.

Appellant states that his failure to record with BLM evidence of assessment work was because of lack of information. He asserts that continuing work is being accomplished on the claim.

Section 314(a)(1) and (2) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a)(1) and (2) (1976) (FLPMA), and the pertinent regulation, 43 CFR 3833.2-1(a), require that the owner of an unpatented mining claim located after October 21, 1976, shall, prior to December 31 of each year following the calendar year in which the claim was located, file with BLM evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim. Failure to file the required instrument is conclusively deemed to constitute an abandonment of the mining claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a). The Buckeye claim was located after October 21, 1976, in 1978. Thus, one or the other of the documents had to be filed prior to December 31, 1979, the year following the calendar year in which the claim was located, in order to satisfy the requirements of the law.

When appellants failed to file timely either an affidavit of assessment work or a notice of intention to hold the mining claim, BLM properly held the claim to have been abandoned and declared it void. Robert R. Eisenman, 50 IBLA 145 (1980); Geomet Exploration, Inc., 47 IBLA 135 (1980); Northwest Mining & Mercantile, Inc., 46 IBLA 360 (1980); Willene Minnier, 45 IBLA 1 (1980); Juan Munoz, 39 IBLA 72 (1979); Donald H. Little, 37 IBLA 1 (1978). The procedures established pursuant to section 314 of FLPMA, supra, are mandatory and may not be waived. Lo Lo M. Cosby, 46 IBLA 363 (1980); Donald H. Little, supra.

It is unfortunate that appellants were misinformed as to the recordation requirements of assessment work, but all persons dealing with the Government are presumed to have knowledge of duly promulgated regulations. Robert W. Hansen, 46 IBLA 93 (1980); Dermot S. McGlinchey, 38 IBLA 211 (1978); Verner F. Sorenson, 32 IBLA 341 (1977).

Appellants may relocate this claim and file appropriate notice thereof as required by 43 CFR 3833.1, subject to any intervening rights of third parties and assuming no intervening closure of the land to operation of the mining laws.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Douglas E. Henriques  
Administrative Judge

We concur:

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James L. Burski  
Administrative Judge

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Joseph W. Goss  
Administrative Judge

